

FILED



11:14 am, 8/13/21

Margaret Botkins
Clerk of Court

PPEX, LLC,

Plaintiff,

vs.

BUTTONWOOD, INC. D/B/A btn.,
JAKE GARWOOD, and JACK MILLER,

Defendants.

Case No. 21-CV-53-F

**ORDER GRANTING DEFENDANT'S MOTION FOR CONTINUANCE OF
HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

Defendant Buttonwood, Inc., d/b/a btn. ("Buttonwood") moves for a two-day continuance of the hearing on Plaintiff's motion for preliminary injunction set for Monday, August 16, 2021. ECF No. 60. Buttonwood asks for the continuance because one of its counsel, Bruce Asay, is ill with COVID-19 despite vaccination. His isolation period ends on Sunday, August 15, 2021, but he would need additional time to prepare.

Plaintiff PPEX, LLC opposes the motion. ECF No. 61. Plaintiff notes among other things that Buttonwood is represented in this case by three lawyers: Bruce Asay, Greg Asay, and Patrick Spaulding Ryan. Greg Asay is a member of the Court's bar. He appears as co-counsel on Defendant's filings, although he has not yet entered a formal notice of appearance. Mr. Ryan was granted pro hac vice admission earlier this month and entered

his limited appearance today. Mr. Ryan notes that he is not a full-time litigation attorney. He is acting general counsel for Buttonwood.

Plaintiff further notes that its motion for preliminary injunction has been pending since it filed the complaint in March 2021, has been fully briefed since mid-June 2021, and has been set for hearing since July 13, 2021.

Although Buttonwood's counsel was remiss in waiting until yesterday afternoon to request the continuance from the Court, the Court is also sympathetic to Bruce Asay's illness, and its unforeseeable nature. Although his period of officially-required quarantine will end the day before the hearing, Bruce may not know until Monday if he remains symptomatic. Greg Asay is counsel on the filings, but given his close family relationship to Bruce (his father), the Court is unwilling to assume at this juncture that Greg is not himself infected. The Court recognizes that a continuance will inconvenience Plaintiff in needing to reschedule its counsel and witness(es) for the hearing, but unfortunately Cheyenne is experiencing a significant upswing in COVID-19 infections particularly of the delta variant. The Court finds this last-minute continuance is necessary to ensure Defendant's representation at the hearing will not unduly risk the public health of everyone in the courtroom. The motion to continue is GRANTED.

For the new date, Defendant requests only two days of continuance. But Plaintiff notes that its primary witness has a long-scheduled vacation for August 17-20, 2021. Plaintiff's local counsel, Patrick Hickey – who must attend as the sponsoring member of the Court's bar for Plaintiff's lead counsel – is unavailable August 23-27, 2021. The

Court's current calendar also does not permit rescheduling the hearing until the afternoon of September 2, 2021.

Accordingly, the hearing on Plaintiff's motion for preliminary injunction set for **Monday, August 16, 2021 at 2:30 p.m. is VACATED and RESET to September 2, 2021 at 1:30 p.m.**

Counsel and witnesses shall please take note of the current mask and social distancing protocols in the courthouse, available on the Court's website.¹

IT IS SO ORDERED this 13th day of August, 2021.



NANCY D. FREUDENTHAL
UNITED STATES DISTRICT JUDGE

¹ The parties are free to confer whether they would like this hearing to be held by zoom videoconference. This would not allow for an earlier hearing but would reduce further uncertainty from the coronavirus. If the parties wish to have the hearing by zoom, they should communicate with the courtroom deputy, Abby Logan, at least three full business days before the hearing.